**SOCIAL STUDIES 30-2 Module 6**

**Assignment 6.7**

**American**

**Native American civil rights**

http://en.wikipedia.org/wiki/Native\_American\_civil\_rights

**Canadian**

**Canadian Constitution** - rights of the individual

http://laws-lois.justice.gc.ca/eng/Const/page-15.html#h-39

**Rights of the collective**

http://www.nelson.com/albertasocialstudies/productinfo/gr6\_9/documents/abss9ch4draft.pdf

pages 121 and 122

**War Measures Act**

http://www.thecanadianencyclopedia.ca/en/article/war-measures-act/

**Patriot Act**

http://people.howstuffworks.com/patriot-act.htm

http://en.wikipedia.org/wiki/Patriot\_Act

Anti-terrorism Act (Canada)

website given- language too difficult.

Link to a National Women's Lawyers group and the issues they see with the act.

http://nawl.ca/en/jurisfemme/entry/bill-c-36-the-anti-terrorism-act

[National Association of Women and the Law](http://nawl.ca/en/)

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[Français](http://nawl.ca/fr/jurisfemme/entry/bill-c-36-the-anti-terrorism-act)

Bill C-36: The Anti-terrorism Act

Posted 2002-02-17 by Andrée Côté | [Jurisfemme Publications – Volume 21, No. 1, Winter 2002](http://nawl.ca/en/jurisfemme/jfvolume21winter2002)

At the urging of the United States after September 11th, governments in Europe and North America adopted stringent anti-terrorism measures. Canada responded to the call by passing tough new legislation. Bill C-36, now the Anti-terrorism Act (S. C. 2001, c. 41, online at: http://www.parl.gc.ca/common/Bills\_House\_Government.asp?Language=E&Parl=37&Ses=1) received Royal Assent on December 18, 2001.  
  
NAWL and the National Organization of Immigrant and Visible Minority Women of Canada voiced our concerns about Bill C-36 and its impact on the civil and political rights, and the equality rights of persons living in Canada. We presented our opinions to a special Senate Committee on December 6, 2001 (transcript available online at: http://www.parl.gc.ca/common/committee\_SenProceed.asp?Language=E&Parl=37&Ses=1&comm\_ id=90). The following is a summary of our comments. As there were no changes to the bill, these comments apply equally to the Act as passed.  
  
Bill C-36 threatens human rights in Canada and does not strike the necessary balance between collective security and individual liberties. We fear the limitations on rights and freedoms will have a disparate impact on racialized minorities, immigrants and other historically disadvantaged communities in Canada. We are also concerned that it will restrict legitimate political protest in Canada, and will have a chilling effect, limiting free speech, freedom of association and political participation.  
  
As an omnibus bill, C-36 integrates the anti-terrorist provisions into the Criminal Code, the Canada Evidence Act, the National Defense Act, the Access to Information Act, the Privacy Act, and other legislation. It therefore risks contaminating our basic legal safeguards and rules. Simply adopting a sunset clause is not sufficient because much harm will be done in the first years of the operation of the bill.  
  
While we are relieved that the Minister of Justice amended the initially proposed definition of "terrorist activities," we think the current definition is still too vague, allowing for the arrest and detention of persons who are not terrorists.  
  
Indeed, the definition of terrorist activities also includes an act or omission that causes "serious interference with or serious disruption of an essential service, facility or system, whether public or private." This definition is much too broad, and will result in confusion leading to the inappropriate characterization of activities as "terrorist acts." In addition, the introduction of the notion of intimidation with regard to "economic security" in the definition of a terrorist act is vague, inappropriate and may have untold ramifications.  
  
Bill C-36 introduces the new concept of "facilitating" a terrorist activity into the Criminal Code. This new concept departs from the accepted and understood notions of aiding and abetting contained in section 21 of the Code. The concept of "facilitating" is not clear, and its introduction might "contaminate" the Criminal Code, bringing about confusion with respect to the interpretation of aiding and abetting. Indeed, the concept is so vague that it might dissuade lawyers from representing accused persons or groups out of fear of being accused themselves of providing a skill or expertise for the benefit of a terrorist group. This directly affects the most basic right to legal representation.  
  
Bill C-36 allows for the creation of a government list of terrorist groups to include any entity that the Solicitor General has reasonable grounds to believe carried out, participated in, or facilitated a terrorist activity. Despite the fact that being placed on such a list will no doubt have drastic consequences for any organization, there are not adequate procedural safeguards to challenge the decision. On the contrary, the bill includes a presumption that if the Solicitor General does not respond within 60 days to an application challenging the placement of a group on the list, he is deemed to have decided to that the applicant will remain listed. Although the applicant may apply to a judge for judicial review of this "decision," the judge may examine in private all security or intelligence reports submitted by the Solicitor General if the judge is of the opinion that the disclosure of the information would injure national security or endanger the safety of any person. The applicant only has a right to receive a statement summarizing the information available to the judge.  
  
In addition, the judge may receive any evidence "even if it would not otherwise be admissible under Canadian law" and may base his or her decision on that evidence. There is no mechanism to appeal evidentiary decisions. This type of procedure is completely inconsistent with basic principles of fundamental justice, and is reminiscent of Star Chamber principles.  
  
We are also very concerned with the preventive arrest and detention provisions of the bill, as well as the new investigative procedures. Persons under investigation are presently not compelled to answer questions outside the framework of a trial. The changes in the Bill represent a major expansion of investigative powers of law enforcement agencies. The right to silence is a hallmark of fundamental justice under common law and the bill's provisions effectively abrogate that right, forcing persons to speak and provide evidence against their will.  
  
These provisions violate basic Charter protections, such as the right to silence. We are dismayed that this bill allows for arrest on mere suspicion. This is a highly subjective criteria that will allow for uncontrolled abuse. Given the current climate, it may also give rise to a wave of discriminatory arrests against racialized persons and groups.  
  
The increasing secrecy of criminal trials and the expanded list of reasons why the public may be barred from aspects of a trial, along with bans on publication of proceedings are of great concern. Our worries are compounded by the power to exclude the application of access to information and privacy legislation in the interest of national security and protecting international relations. In addition, we consider that the provisions around disclosure of information regarding terrorist property offend the rights of clients to confidentiality and solicitor-client privilege. Indeed, the proposed provisions would subject lawyers to criminal charges for performing their professional duty to keep client information confidential. This would most certainly be a violation of solicitor-client confidentiality and privilege.  
  
We are also apprehensive about the fact that the bill facilitates spying on Canadians by providing the Canadian Security Establishment with increased powers, without any provision for independent review or judicial scrutiny.  
  
The sections prohibiting the financing of terrorist activities prevents fundraising on behalf of groups resisting oppressive regimes, or simply providing funds for community survival. The lack of protection from abuse of process in decertifying charitable organizations may also have a very negative impact on the capacity of communities to organize and provide essential support to their members.  
  
Bill C-36 amends the Canada Evidence Act by abolishing sections 37 and 38, and replacing them with provisions that  
  
would allow for the exclusion of evidence on the grounds of a "specified public interest" or because it may be "potentially injurious information" that could injure "international relations or national defence or national security." The new provisions allow for the complete exclusion of evidence in some cases, or the disclosure of only a part or a summary of the information. In addition, the bill provides that in making decisions on these issues, the court may receive into evidence anything that is appropriate "even if it would not otherwise be admissible under Canadian law, and may base its decision on that evidence." This reform is being proposed without any evidence that there are problems with the current provisions of the Canada Evidence Act that were adopted after extensive consultation, litigation and law reform work.  
  
While we understand the need to protect Canadians from acts of terrorism, we ask the Senate to send a clear message to the House of Commons that these draconian measures, adopted in haste without time for a democratic debate and considered analysis, is unacceptable. This bill will profoundly alter Canadian law in many different domains, yet the government has not even established that we are faced with a real threat of terrorism.  
  
As women and as feminists, we certainly understand the need to take action against terrorism. As a movement, we have been fighting against domestic sexual terrorism that forces approximately 100,000 abused women and children to flee from their home and seek refuge in shelters every year. Women know what terror feels like, and we have been urging our governments to take effective measures against violence against women for over 30 years. Yet we have never recommended that government infringe basic civil liberties to do so. Even though it is frustrating to see that abusers always benefit from the presumption of innocence, that guilty abusers are often freed because of procedural issues, and that it can be very difficult to obtain legal sanctions that effectively guarantee a woman's security, or that validate her experience as a victim, feminists have never called for the kind of measures that we now see in Bill C-36.  
 *Andrée Côté is NAWL's Director of Legislation and Law Reform.*

What follows is a focus group discussing the ATA.

**The Anti-terrorism Act**

**Justice Canada and Public Safety and Emergency Preparedness Canada**

**Summary Report: Public Consultation with Ethnocultural and Religious Communities on the Impact of the  
*Anti-terrorism Act***

November 29, 2004  
Ottawa, Ontario  
  
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**This document is a summary of the views expressed by the participants and does not reflect the views of the Department of Justice or the Department of Public Safety and Emergency Preparedness Canada.**

**Report of Breakout Groups on Focus Question 3**

**What is the general understanding in your community of what powers and/or provisions the *Anti-terrorism Act* contains? Which of these concern members of your community most?**

**Group One**

The group reported that while there was agreement on the problems, there was strong disagreement on how to tackle them.

The debate centred on implementation and activities within the community, and how the communities therefore understand that ATA. Some participants felt there had been a total breakdown of trust in the system as a result of an overzealous implementation of the *Anti-terrorism Act*. Police were racially profiling people of colour and people of certain religions, including Muslims. Some group members suggested the ATA had the effect of allowing the untrammelled expression of racial profiling and racism that has long existed in the policing community.

Other group members presented an alternative interpretation, calling for increased training of police and increased resources, noting that CSIS has admitted its lack of resources. These group members suggested it was naïve to believe that there is no terrorist infrastructure in Canada. It is important that police are able to deal with the real threats. The credibility of Canadian law is at stake.

Some group members stated that people in the Muslim community do not believe a word the police say and feel that the term "war on terrorism" translates into a war on Muslims. Other group members said due process must be weakened in order to enforce the law. The group debated whether procedural rule of law, a foundation of Anglo-Canadian law, is being undermined by the *Anti-terrorism Act*.

Group members suggested that threat assessments are inadequate and incompetent. Others wondered if the ATA could be modified to eliminate some of the implementation and enforcement difficulties. The suggestion was made that the term sensitivity training be replaced by anti-racist training, and that anti-racist training be thorough, systematic, and a fundamental part of the preparation of all individuals who work in law enforcement.

Group members agreed that everyone wants to feel secure. However, some group participants said the ATA made them feel more secure, while most participants said it made them feel a great deal less secure.

**Group Two**

Group Two reported that there was little understanding about the *Anti-terrorism Act* in the community, and that neither the Justice Department nor the Department of Public Safety and Emergency Preparedness Canada had done enough in terms of public education campaigns. Fear, intimidation, and a sense of broad abuse of powers characterize feelings in communities. Reactions differ widely in the community, depending on status as immigrants, refugees, or those who are Canadian born. There is a broad sense of disappointment at what is perceived to be a rush toward a police state.

The Canadian Arab Federation indicated that four out of five people had chosen Canada because of its human rights record and policy of multiculturalism. Some group participants believe that existing legislation precluded the need for the *Anti-terrorism Act*. Furthermore, a law depends not just on what is written on paper but also on how it is played out on the citizenry. Implementation has resulted in racial profiling and invasive tactics of "pat-downs" and screening by both customs and immigration officials at airports.

The group reported on "two solitudes" of differing opinion about whether or not there is a real and present danger of terrorism. Some people feel they do not have enough security and other people feel they do not have enough human rights. The group noted that the request in 2001 for an anti-discriminatory clause embedded in the preamble to the *Act* was not heeded.

The group explored why terrorism has become synonymous with Muslims for many people. Concern was expressed about violations of human rights in the ATA, including rule of law, accountability, oversight, transparency, the way that entities are listed, arrests without warrant, investigative hearings, and an overly broad definition of terrorism. The group noted that racists, neo-Nazis, and the Aryan Nation are the only ones not caught in the dragnet. The legislation should be analyzed to determine its impact according to gender, race and ethnicity.

**Group Three**

Group Three reported on the extremely problematic manner in which the RCMP and CSIS are implementing the legislation, even if people conclude there is nothing wrong with the actual law itself. Secondly, the group felt that many community members do not know the details of the *Act*. It was reported that mobility rights have been limited because of information sharing. The issue of how indigenous communities have been affected by the *Act* was discussed. The group also described the negative effects on relief organizations such as the new difficulty in recruiting board members.

The next issue raised was the quick 'turn around' time of Bill C-36 and the perception that it was rushed through.

In conclusion, the group reported that people do not feel more secure but rather more insecure. The ATA is perceived as giving license for authorities of the law to violate people's rights, and for the private sector to incorporate security concerns in their hiring and employment practices..

**Canadian Charter of Rights and Freedoms and Rights of People with Disabilities**

# Human Rights and Disabilities

[Legal Protection](http://www.pch.gc.ca/pgm/pdp-hrp/canada/abl-eng.cfm#LegaL) | [FPT Initiatives](http://www.pch.gc.ca/pgm/pdp-hrp/canada/abl-eng.cfm#FPT) | [International](http://www.pch.gc.ca/pgm/pdp-hrp/canada/abl-eng.cfm#International) | [Other resources](http://www.pch.gc.ca/pgm/pdp-hrp/canada/abl-eng.cfm#Resources)

"Equality is a right guaranteed to all Canadian citizens. The values inherent in the concept of equality include self-determination, autonomy, dignity, respect, integration, participation and independent living." - In Unison: A Canadian Approach to Disability Issues - Values

According to the United Nations, a disability is a temporary or permanent physical, intellectual or sensory impairment, a medical condition or a mental illness. Some examples are blindness, deafness, or paralysis. It can affect an individual's ability to perform an activity within the range considered normal for a human being, for instance, a difficulty in seeing or hearing at what is generally considered a normal level. Having a disability does NOT mean that a person is less capable of fully participating and contributing as a citizen in Canadian society.

Persons with disabilities can face many barriers and challenges, including accessing the tools that make it possible to participate in society. Society's attitudes can also create obstacles to inclusion. There is sometimes a failure to recognize the social and economic contributions of people with disabilities and a tendency to see only the disability rather than the person. A lack of accommodation in employment, education and transportation can present a further challenge. As a result, persons with disabilities do not always have access to the same opportunities as others, and they are more likely to be socially isolated, have higher rates of unemployment, and live below the poverty line.

Equality and full participation are human rights. All persons are entitled to equal access to the basic rights and fundamental freedoms that most people take for granted, e.g. health care, employment, education, participation in cultural activities.

### Legal Protection

Prohibiting discrimination means ensuring equal opportunity and accommodating the needs of persons with disabilities. In Canada, the right to equality and the duty to accommodate are guaranteed by law.

Canadian Charter of Rights and Freedoms  
The [Canadian Charter of Rights and Freedoms](http://canada.justice.gc.ca/Loireg/charte/const_en.html), enacted in 1982, includes a specific mention of physical or mental disability as a prohibited ground of discrimination. This marked the first time that such a right was guaranteed in the Constitution of a country. Section 15 of the Charter makes it illegal for governments in Canada to discriminate against persons with disabilities in their laws and programs.

Canadian Human Rights Act

Physical and mental disability are prohibited grounds of discrimination under the [Canadian Human Rights Act](http://laws.justice.gc.ca/en/h-6/text.html), which also includes a "duty to accommodate " . Under the Act, federally regulated employers are bound by law to prevent discrimination and to provide access and support to individuals with disabilities. However, employers are required to accommodate persons with disabilities only to the point of the employers' "undue hardship." Health, safety and cost reasons may make accommodation too extraordinary, and therefore, too difficult or hazardous for the employer. [A Place For All: A Guide to Creating an Inclusive Workplace](http://www.pch.gc.ca/trnstn-eng.cfm?site=http://www.chrc-ccdp.ca/discrimination/apfa_uppt/toc_tdm-en.asp) is a Canadian Human Rights Commission guide to help employers understand their legal obligations regarding the duty to accommodate, and create their own workplace accommodation policies and procedures.

Employment Equity Act

The objective of the [Employment Equity Act](http://laws.justice.gc.ca/en/e-5.401/text.html) is to achieve equality in the workplace so that no person is denied employment opportunities for reasons unrelated to ability and to correct the conditions of disadvantage in employment (duty to accommodate) experienced by persons with disabilities, women, Aboriginal peoples and visible minority groups. The Act obligates federally regulated employers to make every reasonable effort to eliminate discrimination, which might result from rules, practices or barriers that have an adverse impact on the designated groups.

Provincial and Territorial Legislation

Provincial and territorial governments also have various laws that prohibit discrimination against persons with disabilities, including human rights codes, acts or charters. See below for suggested Web sites to obtain additional information on these laws.

http://www.pch.gc.ca/pgm/pdp-hrp/canada/abl-eng.cfm